

### REMARKS/ARGUMENTS

The claims are 2-5. Newly written claim 5 replaces canceled claim 1. Dependent claims 2-4 have been amended to improve their form and to depend on newly written claim 5 instead of canceled claim 1. The specification, including the Abstract, has also been amended. Support may be found, *inter alia*, in the original disclosure at pages 3 and 4, FIGS. 3 and 4, and the Abstract. Reconsideration is expressly requested.

The Abstract was objected to as using the words "relates" and "said," and the specification was objected to as lacking headings and as referring to claim 1. In response, the specification including the Abstract has been amended to correct these informalities. The specification has also been amended to include the American term "ties" in place of the British term "sleepers".

The Examiner rejected claims 1-4 as being indefinite under 35 U.S.C. 112 in failing to set forth specific process steps. The Examiner also rejected claims 1-4 under 35 U.S.C. 101 for similar reasons. Claim 1 was also rejected as being indefinite because of the term "sleepers" which the Examiner considered to be undefined. In response, Applicants have, *inter alia*,

canceled claim 1 in favor of newly written claim 5, which more clearly sets forth the steps of the claimed process. Claim 5 also refers to "ties" (railroad ties) instead of "sleepers". "Sleeper" is the British term for "tie". It is respectfully submitted that all claims fully comply with 35 U.S.C. 101 and 112, and Applicants respectfully request that the rejection on these grounds be withdrawn.

Claims 1-4 were rejected under 35 U.S.C. 102(b) as being anticipated by *Theurer U.S. Patent No. 5,099,097* ("*Theurer*"). Essentially the Examiner's position was that *Theurer* discloses the method recited in the claim except for multiple rails which was considered to involve only routine skill in the art.

This rejection is respectfully traversed.

As set forth in newly written independent claim 5, Applicants' invention provides a method for welding two rails of a track using a welding unit of a welding machine. In accordance with the method, compression cylinders of the welding unit are actuated to move first and second rails gripped by clamping jaws of the welding unit in a longitudinal direction of the rails. A rail anchor is produced in a third rail adjoining the second rail

via a force-locking connection of a section of the third rail to ties. A welding process is conducted to weld the first and second rails to each other. Parallel to the welding of the first rail to the second rail, a compressive force for producing a compressive stress is passed into a front rail end of the second rail via a rail-pushing device supported on the rail anchor of the third rail in a direction towards the first rail. After termination of the welding process, the first rail is braced with ties. In this way, Applicants provide a method that makes it possible to perform the welding operations independently of the prevailing actual temperature, which provides economic advantages and increased safety because it is no longer necessary to use temporary fish-plate connectors until the actual temperature is in the neutral range.

The rail-pushing device supported on the third rail, with the third rail being anchored to ties via a force-locking connection, passes compressive stress to the second rail to enable the first and second rails to be successfully welded together. The connection of the third rail to ties precludes the third rail from moving relative to the ties. The rail-pushing device supported by the third rail will thereby also be precluded from moving relative to the ties and thus has a sturdy base which

helps it pass compressive stress to the first and second rails to enable the first and second rails to be successfully welded together.

*Theurer* fails to disclose a method for welding two rails of a track wherein a rail-pushing device is supported on a third rail, wherein the third rail is anchored to ties via a force-locking connection. *Theurer* also fails to disclose a rail-pushing device, supported on a tie-anchored, third rail, that passes compressive stress to a second rail to assist with the welding of a first rail and the second rail.

*Theurer* makes no disclosure of any ties in the entire reference. The Examiner has perhaps been confused by use of the British term "sleepers" instead of the corresponding American term "ties". The Examiner has taken the position that clamping jaws 17 in *Theurer* are sleepers. Clamping jaws 17 are not sleepers or ties, but rather are part of the welding unit 1 for gripping the sides of rail section ends. See *Theurer* at column 5 lines 14-17. As previously mentioned, the specification and claims have been amended to refer to "ties" instead of "sleepers" to reduce confusion that has possibly resulted from the use of British terminology. In addition, contrary to the Examiner's

clamping jaws 18 into position, not "compression cylinders" that move the rails 7 in *Theurer*.

*Theurer* also makes no disclosure or suggestion of any kind of rail anchor that is a force-locking connection of a rail to ties of the track. Rather, *Theurer* simply shows a conventional welding unit by means of which two rails are welded together. As is well known to a person skilled in the art, the fastening means connecting these two rails to the ties have to be loosened beforehand in order to permit the rails to be moved in the longitudinal direction by means of the clamping jaws of the welding unit. There is no disclosure or suggestion in *Theurer* of providing a rail anchor by means of a third rail, thus creating a fixed and unmovable base for a rail pushing device for producing a compressive force which is then passed into the second rail.

The Examiner took the position in the 102(b) rejection that *Theurer* fails to disclose multiple rails, but that the mere duplication of essential working parts of a device involves only routine skill in the art. As described above, however, *Theurer* fails to disclose any ties or sleepers, and thus fails to disclose the use of ties to support a rail anchor that provides an additional compressive stress to aid in the welding of two rails. Thus, it is respectfully submitted that the difference

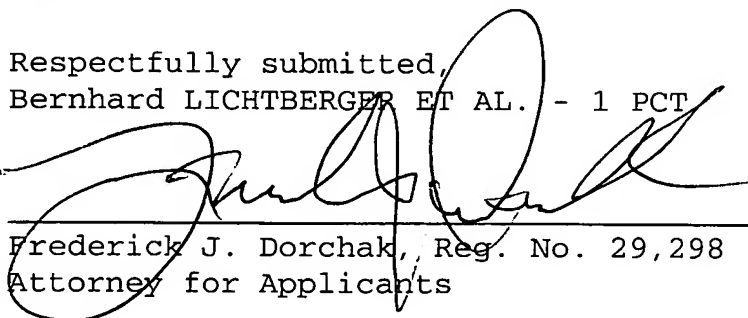
between the method disclosed in *Theurer* and Applicants' method as recited in the claims is not mere duplication of essential working parts.

Accordingly, Applicants respectfully submit that new claim 5 is patentable over the cited reference, together with claims 2-4 which depend thereon.

In summary, claim 5 has been added and claim 1 has been canceled. Claims 2-4 have also been amended and now depend on newly-written claim 5. In view of the foregoing, it is respectfully requested that the claims be allowed and that this application be passed to issue.

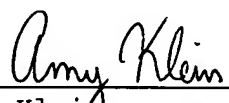
Respectfully submitted,  
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Enclosure:      Abstract of the Disclosure

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 2, 2009.

  
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